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The Honorable Andrew L. Carter, Jr.
United States Magistrate Judge
United States Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201-1818

Allen & Overy LLP

1221 Avenue of the Americas
New York NY 10020

Tel 212 610 6300
Fax 212 610 6399
Direct line 212 610 6360
michael.feldberg@allenoverly.com

October 29, 2010

Re: The City of New York v. Milhelm Attea, et al.
06-CV-3620

Dear Judge Carter:

We represent defendant Gutlove & Shirvint, Inc. in the above-referenced action, and write in opposition to plaintiff's letter of October 26, 2010. We respectfully submit that there is no need to expedite the 30 day response period set out in Fed. R. Civ. P. Rules 33(b)(2) and 36(a)(3), with respect to plaintiff's Third Set of Interrogatories and Third Request for Admissions.

First, plaintiff's discovery requests are unnecessary at this time. There is no pending legal issue to which urgent responses are required. While plaintiff's counsel has stated that plaintiff intends to move for a preliminary injunction to seek to enjoin defendants from selling unstamped cigarettes to Native American retailers, the new state statutes and regulations requiring that cigarettes sold to Native American retailers be stamped, New York Tax Law Sections 471(1), (2), (5) and 471-e and 20 N.Y.C.R.R. Section 74.6, are enjoined until at least November 12, 2010. *See Seneca Nation of Indians v. Paterson, et al.*, 10-CV-687A, slip op. at *2 (W.D.N.Y. Oct. 14, 2010) (Decision and Order for Stay Pending Appeal, whereby "the Court finds it necessary to further stay implementation of the new tax amendments pending appeal" to the Second Circuit) (Order attached hereto as Ex. A); *see also Unkechaug Indian Nation v. Paterson, et al.*, 10-CV-711A, slip op. (W.D.N.Y. Oct. 15, 2010) (Order Granting Temporary Restraining Order, extended through November 12, 2010 by Text Order of Oct. 26, 2010) (October 15, 2010 Order attached hereto as Ex. B; docket sheet showing October 26, 2010 Text Order extending temporary restraining order to November 12, 2010 attached hereto as Ex. C). Moreover Gutlove has already represented in open Court that it intends to comply with the law however the Courts ultimately determine it. As the implementation of the new law has been

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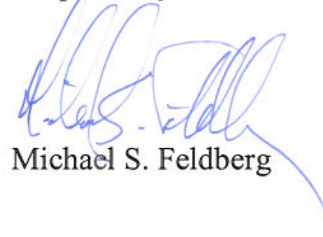
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enjoined and will continue to be enjoined until, at the earliest, November 12, 2010, and the New York Court of Appeals has held that prior law does not prohibit wholesale dealers such as defendants from selling unstamped cigarettes to Native American retailers, Cayuga Indian Nation v. Gould, N.Y. 3d 614 (2010), there is no need for urgency.

Second, plaintiff has access to the information it seeks in its Third Set of Interrogatories and Third Request for Admissions. As a licensed wholesale stamping agent, each month Gutlove files with the New York Department of Taxation and Finance ("DTF") Forms CG-6 that indicate the quantity and price of cigarettes sold and the identity of the customers to whom Gutlove sells. Plaintiff has access to these Forms CG-6 as it is party to a written agreement with DTF that provides for the sharing of cigarette tax information. *See* Agreement, attached hereto as Ex. D. The information plaintiff seeks in its discovery requests is equally available to it from DTF.

Given the enjoined state of the law and plaintiff's existing access to the information it seeks, Gutlove respectfully requests that the Court deny plaintiff's request for an order requiring defendants to respond before the expiration of the response periods set forth in Fed. R. Civ. P. Rules 33(b)(2) and 36(a)(3).

Respectfully submitted,



Michael S. Feldberg

cc: All Counsel of Record (by ecf)